



Reprinted
February 5, 2002

HOUSE BILL No. 1164

DIGEST OF HB 1164 (Updated February 4, 2002 4:34 PM - DI 97)

Citations Affected: IC 27-1; IC 27-2; IC 27-4; IC 34-30.

Synopsis: Property and casualty insurer use of credit information. Imposes certain requirements and restrictions concerning the use of credit information in the underwriting of property and casualty insurance. Makes a willful violation of the requirements an unfair and deceptive act and practice in the business of insurance.

Effective: July 1, 2002; January 2, 2004.

Crooks, Kuzman, Ripley

January 9, 2002, read first time and referred to Committee on Insurance, Corporations and Small Business.
January 23, 2002, amended, reported — Do Pass.
February 4, 2002, read second time, amended, ordered engrossed.

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HB 1164—LS 7131/DI 97+



Reprinted
February 5, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1164

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 21. Credit Information in Property and Casualty**
5 **Insurance**

6 **Sec. 1. As used in this chapter, "applicant" means an individual**
7 **who applies for a policy of property and casualty insurance.**

8 **Sec. 2. As used in this chapter, "claim loss" means a claim paid**
9 **under a policy of property and casualty insurance, including a**
10 **claim for:**

- 11 (1) **bodily injury;**
12 (2) **property damage;**
13 (3) **medical payments;**
14 (4) **collision coverage;**
15 (5) **comprehensive coverage;**
16 (6) **car rental coverage; or**
17 (7) **towing coverage.**

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1 Sec. 3. As used in this chapter, "commissioner" refers to the
2 commissioner of the department.

3 Sec. 4. As used in this chapter, "credit information" means
4 credit related information obtained through a review of a credit
5 history, credit report, or credit score, or on an application for a
6 policy of property and casualty insurance.

7 Sec. 5. As used in this chapter, "credit score" means a number
8 or rating derived through a credit scoring methodology.

9 Sec. 6. As used in this chapter, "credit scoring methodology"
10 means the particular algorithm, computer model, or other method
11 used by an insurer to reduce to a numerical or other rating for use
12 in the insurance underwriting process certain credit history data
13 contained in an individual's credit report.

14 Sec. 7. As used in this chapter, "department" refers to the
15 department of insurance created under IC 27-1-1-1.

16 Sec. 8. As used in this chapter, "insured" means an individual
17 who is entitled to coverage under a policy of property and casualty
18 insurance.

19 Sec. 9. As used in this chapter, "insurer" means a person that:

20 (1) is described in IC 27-1-2-3(x); and

21 (2) issues a policy of property and casualty insurance.

22 Sec. 10. As used in this chapter, "property and casualty
23 insurance" means one (1) or more of the kinds of insurance
24 described in Class 2 and Class 3 of IC 27-1-5-1.

25 Sec. 11. (a) This chapter applies to an individual policy of
26 property and casualty insurance.

27 (b) This chapter does not apply to a commercial line of
28 insurance.

29 Sec. 12. (a) An insurer may not use a credit score until the
30 insurer files with the commissioner the credit scoring methodology
31 and changes to the credit scoring methodology that the insurer uses
32 to develop the credit score.

33 (b) The commissioner shall review a credit scoring methodology
34 and changes to the credit scoring methodology filed under
35 subsection (a) for compliance with Indiana insurance laws and
36 rules.

37 Sec. 13. (a) An insurer may not, based solely on credit
38 information, refuse to issue, refuse to renew, or cancel a policy of
39 property and casualty insurance.

40 (b) An insurer does not violate subsection (a) if the insurer
41 offers to provide continuous and identical coverage to an insured
42 under a policy of property and casualty insurance underwritten:



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(1) by an affiliate of the insurer; and

(2) in the same rating class.

Sec. 14. If the credit score of an insured or applicant is adversely impacted or cannot be generated because the credit history of the insured or applicant is insufficient, an insurer shall:

(1) apply underwriting or rating criteria to the insured or applicant as if the insured or applicant had a neutral credit history, as defined in the insurer's underwriting guidelines or rate making standards unless otherwise actuarially justified;

or

(2) exclude the use of credit as a factor in the underwriting or rating process.

Sec. 15. An insurer may not, based on credit information, refuse to issue, refuse to renew, or cancel a property and casualty insurance policy, or transfer an insured to an affiliate or to a different rating class if the insured has:

(1) continuously maintained a policy of property and casualty insurance issued by the insurer;

(2) had no claim loss on the policy specified in subdivision (1); and

(3) had no moving traffic violations;

during the three (3) years immediately preceding the date on which the insurer makes a determination described in this section.

Sec. 16. (a) If credit information is used as a basis for a refusal to issue, refusal to renew, cancellation, or rating of a policy of property and casualty insurance, the insurer shall provide notice to the insured or applicant of the insurer's use of credit information as a basis for the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance according to the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(b) An insurer shall include in a notice required under subsection (a) notice that the insured or applicant has the right to, not more than ninety (90) days after the insured or applicant receives the notice required under subsection (a), request in writing from the insurer an explanation of the most significant reasons for the credit score result, including the principal factors involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance.

(c) Not more than twenty-one (21) business days after an insurer receives a request under subsection (b):

(1) the insurer; or



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(2) a third party that:

(A) possesses the information necessary to provide an explanation requested under subsection (b); and

(B) is directed by the insurer to provide the requested explanation;

shall provide the requested explanation in writing to the insured or applicant.

(d) If an insurer, in the notice provided under subsection (a), provided the explanation requested under subsection (b), the insurer has met the requirement of subsection (c).

Sec. 17. (a) An insurer shall not use credit information as a pretext for discrimination against an insured or applicant that is based on the gender, race, nationality, or religion of the insured or applicant.

(b) A credit scoring methodology may not be used by an insurer if the credit scoring methodology incorporates the gender, race, nationality, or religion of an insured or applicant.

Sec. 18. Information provided by an insurer to the commissioner under this chapter is confidential.

Sec. 19. An insurance producer licensed under IC 27-1-15.6 is not liable in any action arising from the use of credit information by an insurer if the insurance producer complies with the insurer's procedures that are provided to the insurance producer by the insurer concerning the use of credit information.

Sec. 20. A willful violation of this chapter is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4, as determined by the commissioner.

Sec. 21. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

SECTION 2. IC 27-1-21-16.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 2, 2004]: Sec. 16.1. (a) This section applies to an insured or applicant to whom notice is provided under section 16 of this chapter.

(b) This section supplements the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(c) In addition to the explanation that an insurer must provide under section 16 of this chapter, an insurer shall, not more than twenty-one (21) business days after the insurer receives a request under section 16 of this chapter, provide in writing to the insured or applicant the requested explanation, and additional information

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involved in the refusal to issue, refusal to renew, cancellation, or rating of the policy of property and casualty insurance, including:

(1) notice that a credit score was a determining factor in the insurer's decision;

(2) a thorough explanation of the credit scoring process used by the insurer;

(3) a list of all factors contained in the credit history of the insured or applicant that were used to derive a credit score that negatively affected the insurability of the insured or applicant; and

(4) an explanation of how the factors listed under subdivision (3) negatively affected the insurability of the insured or applicant.

SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement,

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announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the

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1 nature of the risk, plan of insurance, the actual or expected
 2 expense of conducting the business, or any other relevant
 3 factor.

4 (B) Unfair discrimination between individuals of the same
 5 class involving essentially the same hazards in the amount of
 6 premium, policy fees, assessments, or rates charged or made
 7 for any policy or contract of accident or health insurance or in
 8 the benefits payable thereunder, or in any of the terms or
 9 conditions of such contract, or in any other manner whatever;
 10 however, in determining the class, consideration may be given
 11 to the nature of the risk, the plan of insurance, the actual or
 12 expected expense of conducting the business, or any other
 13 relevant factor.

14 (C) Excessive or inadequate charges for premiums, policy
 15 fees, assessments, or rates, or making or permitting any unfair
 16 discrimination between persons of the same class involving
 17 essentially the same hazards, in the amount of premiums,
 18 policy fees, assessments, or rates charged or made for:

19 (i) policies or contracts of reinsurance or joint reinsurance,
 20 or abstract and title insurance;

21 (ii) policies or contracts of insurance against loss or damage
 22 to aircraft, or against liability arising out of the ownership,
 23 maintenance, or use of any aircraft, or of vessels or craft,
 24 their cargoes, marine builders' risks, marine protection and
 25 indemnity, or other risks commonly insured under marine,
 26 as distinguished from inland marine, insurance; or

27 (iii) policies or contracts of any other kind or kinds of
 28 insurance whatsoever.

29 However, nothing contained in clause (C) shall be construed to
 30 apply to any of the kinds of insurance referred to in clauses (A)
 31 and (B) nor to reinsurance in relation to such kinds of insurance.
 32 Nothing in clause (A), (B), or (C) shall be construed as making or
 33 permitting any excessive, inadequate, or unfairly discriminatory
 34 charge or rate or any charge or rate determined by the department
 35 or commissioner to meet the requirements of any other insurance
 36 rate regulatory law of this state.

37 (8) Except as otherwise expressly provided by law, knowingly
 38 permitting or offering to make or making any contract or policy
 39 of insurance of any kind or kinds whatsoever, including but not in
 40 limitation, life annuities, or agreement as to such contract or
 41 policy other than as plainly expressed in such contract or policy
 42 issued thereon, or paying or allowing, or giving or offering to pay,

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allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the

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1 property to whom the money is to be loaned negotiate any policy
2 of insurance covering such real property through a particular
3 insurance agent or broker or brokers. However, this subdivision
4 shall not prevent the exercise by any lender of its or his right to
5 approve or disapprove of the insurance company selected by the
6 borrower to underwrite the insurance.

7 (10) Entering into any contract, combination in the form of a trust
8 or otherwise, or conspiracy in restraint of commerce in the
9 business of insurance.

10 (11) Monopolizing or attempting to monopolize or combining or
11 conspiring with any other person or persons to monopolize any
12 part of commerce in the business of insurance. However,
13 participation as a member, director, or officer in the activities of
14 any nonprofit organization of agents or other workers in the
15 insurance business shall not be interpreted, in itself, to constitute
16 a combination in restraint of trade or as combining to create a
17 monopoly as provided in this subdivision and subdivision (10).
18 The enumeration in this chapter of specific unfair methods of
19 competition and unfair or deceptive acts and practices in the
20 business of insurance is not exclusive or restrictive or intended to
21 limit the powers of the commissioner or department or of any
22 court of review under section 8 of this chapter.

23 (12) Requiring as a condition precedent to the sale of real or
24 personal property under any contract of sale, conditional sales
25 contract, or other similar instrument or upon the security of a
26 chattel mortgage, that the buyer of such property negotiate any
27 policy of insurance covering such property through a particular
28 insurance company, agent, or broker or brokers. However, this
29 subdivision shall not prevent the exercise by any seller of such
30 property or the one making a loan thereon, of his, her, or its right
31 to approve or disapprove of the insurance company selected by
32 the buyer to underwrite the insurance.

33 (13) Issuing, offering, or participating in a plan to issue or offer,
34 any policy or certificate of insurance of any kind or character as
35 an inducement to the purchase of any property, real, personal, or
36 mixed, or services of any kind, where a charge to the insured is
37 not made for and on account of such policy or certificate of
38 insurance. However, this subdivision shall not apply to any of the
39 following:

40 (A) Insurance issued to credit unions or members of credit
41 unions in connection with the purchase of shares in such credit
42 unions.

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- 1 (B) Insurance employed as a means of guaranteeing the
 2 performance of goods and designed to benefit the purchasers
 3 or users of such goods.
 4 (C) Title insurance.
 5 (D) Insurance written in connection with an indebtedness and
 6 intended as a means of repaying such indebtedness in the
 7 event of the death or disability of the insured.
 8 (E) Insurance provided by or through motorists service clubs
 9 or associations.
 10 (F) Insurance that is provided to the purchaser or holder of an
 11 air transportation ticket and that:
 12 (i) insures against death or nonfatal injury that occurs during
 13 the flight to which the ticket relates;
 14 (ii) insures against personal injury or property damage that
 15 occurs during travel to or from the airport in a common
 16 carrier immediately before or after the flight;
 17 (iii) insures against baggage loss during the flight to which
 18 the ticket relates; or
 19 (iv) insures against a flight cancellation to which the ticket
 20 relates.
 21 (14) Refusing, because of the for-profit status of a hospital or
 22 medical facility, to make payments otherwise required to be made
 23 under a contract or policy of insurance for charges incurred by an
 24 insured in such a for-profit hospital or other for-profit medical
 25 facility licensed by the state department of health.
 26 (15) Refusing to insure an individual, refusing to continue to issue
 27 insurance to an individual, limiting the amount, extent, or kind of
 28 coverage available to an individual, or charging an individual a
 29 different rate for the same coverage, solely because of that
 30 individual's blindness or partial blindness, except where the
 31 refusal, limitation, or rate differential is based on sound actuarial
 32 principles or is related to actual or reasonably anticipated
 33 experience.
 34 (16) Committing or performing, with such frequency as to
 35 indicate a general practice, unfair claim settlement practices (as
 36 defined in section 4.5 of this chapter).
 37 (17) Between policy renewal dates, unilaterally canceling an
 38 individual's coverage under an individual or group health
 39 insurance policy solely because of the individual's medical or
 40 physical condition.
 41 (18) Using a policy form or rider that would permit a cancellation
 42 of coverage as described in subdivision (17).



1 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
2 vehicle insurance rates.

3 (20) Violating IC 27-8-21-2 concerning advertisements referring
4 to interest rate guarantees.

5 (21) Violating IC 27-8-24.3 concerning insurance and health plan
6 coverage for victims of abuse.

7 (22) Violating IC 27-8-26 concerning genetic screening or testing.

8 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
9 insurance producers.

10 **(24) Violating IC 27-2-21 concerning use of credit information**
11 **in underwriting of property and casualty insurance.**

12 SECTION 4. IC 34-30-2-111.7 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2002]: IC 27-2-21-19 (**Concerning the liability**
15 **of insurance producers in actions arising from the use of credit**
16 **information by an insurer).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1164, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "claim loss" means a claim paid under a property and casualty insurance policy, including a claim for:

- (1) bodily injury;**
- (2) property damage;**
- (3) medical payments;**
- (4) collision coverage;**
- (5) comprehensive coverage;**
- (6) car rental coverage; or**
- (7) towing coverage."**

Page 1, line 5, delete "1." and insert "2."

Page 1, line 7, delete "2." and insert "3."

Page 1, line 13, delete "3." and insert "4."

Page 1, line 15, delete "4." and insert "5."

Page 2, line 1, delete "5." and insert "6."

Page 2, line 4, delete "6." and insert "7."

Page 2, line 6, delete "7." and insert "8."

Page 2, line 11, delete "8." and insert "9."

Page 2, line 20, delete "9." and insert "10. (a)".

Page 2, between lines 28 and 29, begin a new paragraph and insert:

"(b) An insurer violates subsection (a) by offering continuing coverage under subsection (a) if the policyholder has:

- (1) continuously maintained a property and casualty insurance policy issued by the insurer;**
- (2) had no claim loss on the policy specified in subdivision (1);**
- and**
- (3) had no moving traffic violations;**

during the three (3) years immediately preceding the date on which the insurer offers to provide continuing coverage.

Sec. 11. If the credit score of an applicant or a policyholder is adversely affected or cannot be generated because the credit history of the applicant or policyholder is insufficient, an insurer may:

- (1) use additional credit related underwriting criteria that have been filed with the commissioner;**
- (2) apply underwriting criteria to the applicant or**



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policyholder as if the applicant or policyholder had a neutral credit history, as defined in the insurer's underwriting guidelines or rate making standards; or
(3) exclude the use of credit as a factor in the underwriting process."

Page 2, line 29, delete "10." and insert "**12.**".

Page 2, line 37, delete "11." and insert "**13.**".

Page 3, line 8, delete "12." and insert "**14.**".

Page 3, line 10, delete "13." and insert "**15.**".

Page 3, line 13, delete "14." and insert "**16. An insurance producer licensed under IC 27-1-15.6 is not liable in any action arising from the use of a credit score by an insurer.**

Sec. 17."

Page 3, line 16, delete "IC 27-2-21-10.1" and insert "IC 27-2-21-12.1".

Page 3, line 18, delete "10.1." and insert "**12.1.**".

Page 3, line 20, delete "10" and insert "**12**".

Page 3, line 25, delete "10" and insert "**12**".

Page 4, delete line 2.

Page 9, after line 42, begin a new paragraph and insert:

"SECTION 4. IC 34-30-2-111.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 111.8. IC 27-2-21-16 (Concerning an insurance producer and an insurer's use of a credit score).**".

and when so amended that said bill do pass.

(Reference is to HB 1164 as introduced.)

CROOKS, Chair

Committee Vote: yeas 10, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1164 be amended to read as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

(Reference is to HB 1164 as printed January 24, 2002.)

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